Trade Secret Quarterly

February 2026

Splitting Secrets: Federal Circuits Clash Over DTSA Particularity Requirement

Historically, plaintiffs alleging federal trade secret misappropriation claims could walk the line between satisfying the minimum pleading standards set by *Twombly* and *Iqbal*, while avoiding revealing their hand too early. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). This is because the Defend Trade Secrets Act (DTSA) does not expressly require plaintiffs to meet a heightened pleading standard. However, in light of recent federal decisions, plaintiffs seeking relief under the DTSA may be forced to change their strategy depending upon where litigation takes place.

In trade secret litigation, forum matters. There is a growing split among federal circuit courts regarding how particularly plaintiffs must describe the trade secrets at issue, and at which point in the litigation this particularity is required. This divide is highlighted by two recent appellate decisions from the Fourth and Ninth Circuits issued one month apart that reached conflicting conclusions. While both circuits concluded the DTSA requires trade secrets to be pled with "sufficient particularity," the Fourth Circuit requires this at the pleadings stage, whereas the Ninth Circuit gives litigants until the outset of discovery.

Fourth Circuit: Show Particularity at the Pleadings Stage

The Fourth Circuit staked its position first in *Sysco Mach. Corp. v. DCS USA Corp.*, 143 F.4th 222 (4th Cir. 2025). In *Sysco*, the plaintiff brought claims under the DTSA and its North Carolina analog for the defendant's alleged misappropriation of its trade secrets. Sysco's complaint defined its trade secrets twice, first as its "compilation of machinery, software, and confidential information" and then as "Sysco's proprietary and confidential information, including the Copyrighted Works, and technical, financial, operations, strategic planning, product, [vendor] pricing, and customer information." *Id*. at 228. When pressed for additional detail at oral argument, Sysco argued its "technical, financial, operations, strategic planning, product, [vendor] pricing, and customer information" was misappropriated. *Id*. at 229.

While likening Sysco'*s* claims to a "fishing expedition," the Fourth Circuit stated that the three definitions provided for Sysco's trade secrets "suggest that nearly Sysco's entire business is a trade secret." The court elaborated that Sysco's claim was so "sweeping and conclusory" that it was impossible for the defendant to know what it had been accused of misappropriating or for the court to assess whether the plaintiff met the reasonable secrecy and independent economic value requirements. *Id.* The claim is "also unlikely to be true in practice, which means that it falls short of [the] 'plausible on its face'" pleading standard. *Id*. at 229 (quoting *Iqbal*, 556 U.S. at 678).

Ultimately, the court affirmed the district court's dismissal of Sysco's claim for failure to state a claim upon which relief can be granted *and* the district court's denial of Sysco's motion for leave to amend its complaint due to its prior deficient pleadings. *Id*. at 231-32. The *Sysco* court plainly stated that trade secret litigants must identify trade secrets with "sufficient particularity" at the pleadings stage or risk dismissal. *Id*. at 228. This exacting standard reflects the court's belief that "neither the defendant nor the court should be forced into a fishing expedition to find evidence of a valid trade secret in the pleadings." *Id*.

Ninth Circuit: Leniency Until Discovery

The Ninth Circuit, when faced with a similar question one month later, decided differently. In *Quintara Biosciences, Inc. v. Ruifeng Biztech, Inc.*, the Ninth Circuit reversed the district court's order striking nine of the plaintiff's 11 asserted trade secret claims as a discovery sanction for failing to identify them with "reasonable particularity" at the outset of discovery. 149 F.4th 1081, 1085 (9th Cir. 2025).

The district court had borrowed the "reasonable particularity" language from the California Uniform Trade Secrets Act (CUTSA). *Id*. at 1086. But the *Quintara* court emphasized a critical distinction: "By its terms and unlike CUTSA, the federal DTSA does not require a plaintiff to identify with particularity its alleged trade secrets from the start." *Id.* at 1085. Instead, whether a DTSA plaintiff has identified information with "sufficient particularity" to constitute a trade secret is a question of fact – one that "is usually a matter for summary judgment or trial." *Id*.

The court acknowledged that trade secret litigation presents a "delicate problem" because both plaintiffs and defendants have legitimate reasons to protect their proprietary information from competitors. *Id.* at 1085. The *Quintara* court explained that "plaintiffs in trade secret actions may have commercially valid reasons to avoid being overly specific at the outset in defining their intellectual property" because "the more precise the claim, the more a party does to tip off a business rival to where the real secrets lie." *Id.* at 1088. Discovery in such cases, therefore, "requires an 'iterative process where requests between parties lead to a refined and sufficiently particularized trade secret identification.'" *Id.*

Applying a five-factor test for dismissal sanctions, the court found that the district court abused its discretion by effectively dismissing the plaintiff's claims so early in the litigation. *Id.* at 1090-91. All five factors – including the public interest in resolving cases on the merits and the availability of less drastic alternatives – weighed against dismissal. *Id.* Notably, the court observed that "a DTSA trade-secret claim will rarely be dismissible as a discovery sanction" where the question of reasonable particularity "should be resolved on summary judgment or at trial." *Id.* at 1091.

Seventh Circuit Weighs In

The Seventh Circuit addressed the particularity question at a different procedural posture: summary judgment. In *Next Payment Sols., Inc. v. CLEAResult Consulting, Inc.*, No. 24-1377, 2026 U.S. Dist. App. LEXIS 841 (7th Cir. 2026), the plaintiff developed a customized appointment scheduling software tool (the "FAST Tool") for the defendant. *Id*. at *2-3. After the defendant transitioned to a different scheduling software, the plaintiff sued under the DTSA, alleging the defendant had misappropriated trade secrets by examining the FAST Tool's functionality to refine its competing software. *Id*. at *2.

The Seventh Circuit affirmed summary judgment against the plaintiff because – even after the benefit of discovery – it failed to identify concrete trade secrets with sufficient specificity. *Id.* at *8. The plaintiff had provided a list of 34 software "modules" with descriptions such as "manages the inventory of appointments" and "present[s] real-time appointment availability," but these only described what the software did, not how it did it. *Id.* at *9. The court emphasized that "[c]ase law requires a high level of specificity when a plaintiff makes a claim for misappropriation of a trade secret" and that "a plaintiff must show 'concrete secrets' rather than 'broad areas of technology.'" *Id.* at *8 (quoting *REXA, Inc. v. Chester*, 42 F.4th 652, 662-63 (7th Cir. 2022)). Quoting the district court, the Seventh Circuit colorfully observed that "[d]escribing the software functions without disclosing the underlying methods is like saying someone stole your top secret apple pie recipe, but never identifying the secret recipe itself." *Id.* at *14.

While *Next Payment* does not impose the Fourth Circuit's pleading-stage particularity requirement, it reinforces that the leniency afforded during discovery – as *Quintara* permits – does not guarantee success at summary judgment. Plaintiffs who fail to sharpen their trade secret identification through the discovery process do so at their peril.

Practical Takeaways

Whether litigants find themselves in the Fourth, Seventh, or Ninth Circuits – or somewhere in between – it is imperative to understand how and when trade secrets must be defined with particularity. The DTSA pleading standard is a double-edged sword that may give plaintiffs great latitude to define trade secrets during discovery, *or* it may assist defendants in dismissing vague trade secret claims at the pleadings stage.

Disclosure to ChatGPT Leads to Loss of Alleged Trade Secrets

While numerous commentators have discussed how AI might impact various intellectual property rights, few courts have squarely addressed the issue. Less than a week into 2026, that changed.

In *Trinidad v Openai Inc.*, a pro se plaintiff accused OpenAI of misappropriating her trade secrets. No. 25-cv-06328-JST, 2026 US Dist LEXIS 1129, at *9-10 (ND Cal Jan. 5, 2026). There was just one problem: She admitted to using OpenAI's large language model product, ChatGPT, to develop the claimed trade secrets.

The U.S. District Court for the Northern District of California granted OpenAI's motion to dismiss the trade secret claim, finding that the plaintiff had failed to allege she took reasonable measures to keep the asserted material secret. The court observed that using ChatGPT to develop the plaintiff's alleged trade secrets "would have required her to voluntarily share the information she now alleges is part of her 'trade secrets' with OpenAI." Because OpenAI had no obligation to protect the confidentiality of the plaintiff's information, the court found that her alleged trade secrets rights were "extinguished."

The plaintiff sought to turn the tables on OpenAI with its own terms of use, arguing those terms provide that she owned the output of her ChatGPT prompts. But the court held that establishing ownership was insufficient to survive a motion to dismiss because the plaintiff could not show the allegedly misappropriated information was "secret." In the court's words: "By developing her ideas through ChatGPT, [the plaintiff] voluntarily disclosed the existence of her ideas to OpenAI; whether she owned those ideas notwithstanding the disclosure is not relevant."

Although the plaintiff in this case was a pro se individual, businesses should take note too. There is risk not just in employees submitting confidential material to AI platforms, but also in employees using AI platforms to develop information a company may wish to keep confidential. Companies should consider implementing an AI policy that accounts for these risks, updating existing policies if necessary, and training their employees accordingly.

There are also technical safeguards businesses could consider. Some AI platforms are expressly marketed as offering a closed loop that does not train on customer prompts or otherwise disclose customer data. Others go further, claiming to provide an offline closed-universe system that does not result in any information being disclosed even to the AI provider. While there are no guarantees courts will view the use of such systems as consistent with reasonable measures for protecting the secrecy of potential trade secrets, the use of a closed AI system rather than an open one could mitigate risk. Of course, a safer course of action is to avoid the disclosure of potential trade secret material to any third-party vendor in the first place. Companies might also consider restricting access to open AI systems on company-owned computers, phones, and other devices.

Regardless of what steps businesses choose to take, they should be aware of the risks of using AI systems to develop alleged trade secrets. Once that cat's out of the bag, it's not going back in.

FTC Continues to Scrutinize Noncompete Agreements

In September 2025, the Federal Trade Commission (FTC) voted to withdraw its notices of appeal for cases related to its finalized noncompete rule, signaling the end of the FTC's pursuit to ban most employment-related noncompete agreements. However, statements from FTC Chairman Andrew Ferguson and FTC Commissioner Mark Meador signaled that the agency would continue enforcing anticompetitive conduct related to noncompete agreements – a promise the FTC has followed through on.

In September 2025, the FTC sent letters to large employers and staffing agencies working in the healthcare industry, urging them to review whether their employment agreements comply with the law. After stating that available evidence indicates "employers impose noncompetes without due consideration to whether they are necessary and appropriate under the circumstances," the letter encouraged employers "to conduct a comprehensive review of [their] employment agreements … to ensure that they comply with applicable laws and are appropriately tailored."

In November 2025, the FTC finalized a consent order requiring Gateway Services, Inc., a pet cremation company, to cease enforcing noncompete agreements against 1,800 employees that prevented employees from working in the pet cremation industry anywhere in the United States for one year following their employment with Gateway.

The FTC has also engaged in outreach and educational campaigns related to noncompetes. Not only did it invite public comments in September 2025 "to gather information to inform possible future enforcement actions" related to noncompete agreements, it also hosted a workshop in January 2026 that sought to educate attendees about the negative impacts workers experience from noncompete agreements and to inform businesses of the FTC's enforcement priorities. The workshop panels highlighted victims of noncompete agreements, policy perspectives on noncompetes, and the economics of noncompetes.

Employers should not view the FTC's abandonment of its finalized noncompete rule in September as the agency deciding to neglect its enforcement responsibilities. Recent activity indicates that enforcing antitrust laws and addressing anticompetitive conduct involving noncompete agreements continues to be a priority, and employers should start the new year reviewing employment agreements to ensure compliance with the law.

State Noncompete Bills

Updates

New York. Introduced in early 2025, New York S4641 was proposed as a narrower version of an earlier noncompete ban vetoed by Governor Kathy Hochul. In June 2025, the bill passed the Senate and was referred to the Assembly Labor Committee.

Ohio. Introduced in 2025, Ohio SB 11 would effectively ban noncompetes in the state and prohibit employers from enforcing out-of-state venue or forum provisions against workers who primarily reside and do business in Ohio. SB 11 is currently under review in the Senate Judiciary Committee, which held three hearings regarding the bill in 2025.

2026 Legislative Highlights

Training Repayment Agreement Provisions

California (effective January 1, 2026). California's AB-692 prohibits employers from entering into employment contracts that impose any penalty, fee, or cost on an employee if the employee's employment ends, except under limited circumstances. Prohibited fees include a quit fee, reimbursement for immigration or visa-related costs, a replacement hire fee, or a retraining fee.

Healthcare Industry Noncompetes

California (effective January 1, 2026). California's SB351 voids noncompete agreements between a private equity group or hedge fund and a physician or dental practice.

Missouri (introduced January 7, 2026). Missouri seeks to prohibit noncompetes between employers and physicians through newly introduced HB 2184 and HB 2821.

New Hampshire (introduced January 7, 2026). In New Hampshire, SB402 was introduced with the aim of making noncompetes for physician associates void and unenforceable if they are signed or renewed after the effective date.

Vermont (introduced January 6, 2026). In Vermont, H.583 would prohibit noncompetes between employers and licensed physicians, advanced practice registered nurses, or physician assistants.

Virginia (introduced January 14, 2026). Virginia SB128 would prohibit noncompetes for "any person licensed, registered, or certified by the Board of Medicine, Nursing, Counseling, Optometry, Psychology, or Social Work."

Income-Based Bans on Noncompetes

New Hampshire (introduced January 7, 2026). New Hampshire HB1188 would prevent employers from requiring employees who earn an hourly rate less than or equal to 500% of the federal minimum wage to enter into a noncompete agreement.

Other states have recently introduced similar income-dependent legislation that would ban noncompetes for employees making less than a certain amount, including Indiana SB 132 (employees making less than $150,000 annually) and Utah H.B. 203 (employees making less than $155,000 annually).

Severance-Dependent Noncompetes

Virginia (introduced January 8, 2026). Virginia SB170 would prevent enforcing a noncompete if an employer discharges an employee without providing severance benefits to that employee. If the employer provides severance benefits after discharging the employee, the noncompete is only enforceable for the duration of the severance benefits.

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